

**Exhibit 1**

**August 4, 2011 fax from Mr. Meyer**

AUG-04-2011 15:32

P.01/12

**FAX Transmission  
Cover Sheet**

Date: 8/04/11

To: JEFF POWELL Mail Stop: \_\_\_\_\_

Address/Organization: \_\_\_\_\_

FAX Number: 814-342-6483 Office Phone: 814-342-3190

From: JIM MEYER Mail Stop: \_\_\_\_\_

Address/Organization: \_\_\_\_\_

FAX Number: 412-395-6522 Office Phone: 412-395-6958

Number of pages: 20 Including cover sheet

PER OUR DISCUSSION, PLEASE REVIEW & CALL ME  
ON MONDAY 8/08/11.

THANKS,  
JIM

Please visit us on the Intranet at <http://publish.no.irs.gov> to obtain information about every nationally numbered product published by the Internal Revenue Service. If you are not an IRS employee, visit the IRS homepage at [www.irs.gov](http://www.irs.gov) to obtain current information about the IRS and its service.

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Catalog Number 42485F

Catalog Number 42486Q

AUG-04-2011 15:33

P.04/12

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit Page 1 of 7 Form 8849
Name of taxpayer J J Powell, Inc. 109 W. Presqueisle St. Philipsburg, PA 16866	Tax Identification Number 25-1099474		Year/Period ended 201012;201009; 201006;201003; 200912;200909;

<u>Tax Period</u>	<u>Amount per Exam</u>	<u>Amount per Return</u>	<u>Adjustment Due</u>
201012	-0-	(\$22,017)	\$22,017
201009	-0-	(\$18,649)	\$18,649
201006	-0-	(\$20,276)	\$20,276
201003	-0-	(\$22,812)	\$22,812
200912	-0-	(\$19,918)	\$19,918
200909	-0-	(\$17,784)	\$17,784

**Issue**

The issue is that the required 637 UV exempt certificates are not being maintained in a satisfactory manner. Fuel is being sold to local governments tax free without proper certificates on file.

**Facts**

A paid claim review was completed on 7/26/11 for the tax period 200912. The taxpayer is a 637 UV registrant who files 8849 fuel claims for fuel sold to local governments. A review of the required exempt certificates reflected a major deficiency in the maintenance of these certificates. The certificate records were filed in alphabetical order and date. The majority of certificates were outdated and did not cover the period under exam. As a result, the exam was expanded to look at the certificates for the latest 3 years. This review identified certificates: outdated, wrong FED id #, missing, covering multiple years with signatures and dates reflected well after the alleged start of the period noted (example: period 2008 – 2011 signed and dated 7/2010) & no signature. PUB 510 page 54 reflects that purchases under a specified account should identify the effective date & expiration date not to exceed 1 year after the effective date.

The issue was discussed at the closing meeting with Doug Goss (controller) & Bob Hummel (Tax Adm) Doug stated that he was not authorized to bind any agreements and the matter would need to be discussed with Jeff Powell (owner) Doug stated that he felt that since all other records were fine that they should not get cited for the certificates. Doug asked if they proved that the local governments had fed id's would that resolve the matter. I said no because the requirement is for them (seller) to maintain UV exempt certificates at all times for all exempt sales. Prior to this discussion, Doug brought the office staff member who handles the certificates into the meeting. I explained the issue and she said that she would start maintaining them yearly. She asked as to what should be done to customers that purchase and request tax exemption. It was found that some customers are issued purchased cards prior to receiving any exempt certificate. It was noted that no sale tax free sales should take place until a UV exempt certificate is received from the entity.

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Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit Page 2 of 7 Form 8849
Name of taxpayer J J Powell, Inc. 109 W. Presqueisle St. Philipsburg, PA 16866	Tax Identification Number 25-1099474		Year/Period ended 201012;201009; 201006;201003; 200912;200909;

Once the discussion with the office staff member was over & left the room, I informed Doug and Bob that I would be disallowing the claim and all claims for the last 3 years. They didn't agree with the assessment. Subsequent to this discussion, I identified that the statutes for the first two quarters of 2008 have expired or will be expiring prior near the closing of this case. As a result, the first two quarters will not be required for repayment.

Bob stated that he didn't understand why they are being cited when no one else has ever had an issue. I stated that I have no idea when or who completed the last exam and the certificates may have been ok at that time. Doug stated that the owner Jeff Powell would call me but that he would not be available until 7/29 or 8/01. I provided Doug information that could be obtained on the IRS website on the pub 594, pub 510 & 3498. A hard copy of the pub 3498 was available at the closing meeting but Doug did not take it.

On 8/04/11, a conference call was held with Jeff & Keith Powell (owners), Debbie Warren (Group Manager) & Jim Meyer (RA). Jim introduced all parties on the call and reiterated the results of the exam. Specifically, the results of the exam identified that there are major deficiencies with the maintenance of the fuel sales exemption certificates. The discussion noted the procedures followed by the taxpayer on the handling of the exempt certificates. The current requirements & model P were discussed as noted in the 8849 form instructions and pub 510 respectively. Jeff noted that he understood that they had been in error with the current handling of the certificates and that he has discussed with his staff the need to make revisions. Group Manager informed Jeff throughout the discussion the need to follow current procedures outlined in the 8849 instructions with respect to the maintenance of exempt certificates. Group Manager offered to cede the last 2 quarters in 2008 and the first 2 quarters in 2009, waiver of excessive claims penalties and continuance of registration to reach an agreement based on the facts presented. The taxpayers were informed that if the case proceeded as un-agreed that penalties would be assessed per IRC 6675. Jeff stated that he appreciated the consideration but they have recognized their error and have begun to make the correction to be in compliance and the target amount prior to the call was hopefully to pay nothing or no more than approximately \$50,000. Group Manager reconsidered the facts, documentation available during the teleconference and the law and offered to cede all of 2009 which would leave the adjustment at the 4 quarters of 2010 for approximately \$82,000. The taxpayers were reminded that if unagreed – the case would go to appeals the 4 quarters of 2010, the 2 quarters of 2009 and any penalties. It was communicated that the penalties would be 2 times the tax owed as allowed by IRC 6675. The tax payer's position is noted below. It should be noted that upon request Jeff provided his fax # and he confirmed that he still had the RA's contact phone number. Based on the taxpayer's position below, the 5384 & 5385 letters were prepared & forwarded via fax & ordinary mail. It was noted that Jeff would call the RA on 8/08/11 to notify on his decision to agree with the results or move forward as un-agreed.

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Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit Page 3 of 7 Form 8849
Name of taxpayer J J Powell, Inc. 109 W. Presqueisle St. Phillipsburg, PA 16866	Tax Identification Number 25-1099474	Year/Period ended 201012;201009; 201006;201003; 200912;200909;

**Law**

The following IRC codes identify the requirements for maintaining exempt certificates for the sales of gas & diesel tax free to state & local governments plus allowable law to assess penalties.

**IRC, 2011-CODE-VOL, SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.**

**6416(a)(1) GENERAL RULE.** —No credit or refund of any overpayment of tax imposed by chapter 31 (relating to retail excise taxes), or chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he —

**6416(a)(1)(A)** has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;

**6416(a)(1)(B)** has repaid the amount of the tax to the ultimate purchaser of the article;

**6416(a)(1)(C)** in the case of an overpayment under subsection (b)(2) of this section —

**6416(a)(1)(C)(i)** has repaid or agreed to repay the amount of the tax to the ultimate vendor of the article, or

**6416(a)(1)(C)(ii)** has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

**IRC, 2011-CODE-VOL, SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.**

**6416(a)(1)(D)** has filed with the Secretary the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

**IRC, 2011-CODE-VOL, SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.**

**6427(l)(5) REGISTERED VENDORS TO ADMINISTER CLAIMS FOR REFUND OF DIESEL FUEL OR KEROSENE SOLD TO STATE AND LOCAL GOVERNMENTS.** —

**6427(l)(5)(A) IN GENERAL.** —Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.

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Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit Page 4 of 7 Form 8849
Name of taxpayer J J Powell, Inc. 109 W. Presqueisle St. Philipsburg, PA 16866	Tax Identification Number 25-1099474	Year/Period ended 201012;201009; 201006;201003; 200912;200909;	

**6427(I)(5)(B) SALES OF KEROSENE NOT FOR USE IN MOTOR FUEL.** —Paragraph (1) shall not apply to kerosene (other than kerosene used in aviation) sold by a vendor —

**6427(I)(5)(B)(i)** for any use if such sale is from a pump which (as determined under regulations prescribed by the Secretary) is not suitable for use in fueling any diesel-powered highway vehicle or train, or

**6427(I)(5)(B)(ii)** to the extent provided by the Secretary, for blending with heating oil to be used during periods of extreme or unseasonable cold.

**6427(I)(5)(C) PAYMENT TO ULTIMATE, REGISTERED VENDOR.** —Except as provided in subparagraph (D), the amount which would (but for subparagraph (A) or (B)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor —

**6427(I)(5)(C)(i)** is registered under Link section 4101, and

**6427(I)(5)(C)(ii)** meets the requirements of subparagraph (A), (B), or (D) of Link section 6416(a)(1).

**Treasury Regulation section — sets for the requirements for exemption certificates which includes FINAL-REG, TAX-REGS, §48.4041-15. Sales to States or political subdivisions thereof**  
**§48.4041-15. Sales to States or political subdivisions thereof**

(a) *Application of exemption.* —The taxes imposed by section 4041 do not apply in the case of a sale of any liquid by any person for the exclusive use of any State or any political subdivision thereof, the District of Columbia, or in the case of the use of any liquid by any State or any political subdivision thereof, or the District of Columbia, as a fuel in a motor vehicle, motorboat, or aircraft.

(b) *Evidence required to establish exemption.* —Any vendor claiming exemption under this section shall be prepared to produce evidence that will establish the right to exemption from the tax imposed by section 4041. Generally, orders or contracts of a State or a political subdivision thereof, or the District of Columbia, when signed by an authorized officer thereof will be accepted in support of the exemption. However, in the absence of such orders or contracts, a certificate signed by such an authorized officer that the liquid sold was purchased for the exclusive use of a State or political subdivision thereof, or the District of Columbia, will be acceptable.

(c) *Evidence required to establish tax-free sales to a nonprofit educational organization; general rule.* —To establish the right to exemption, the retailer must obtain from the purchaser and retain in its possession a properly executed certificate.



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Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit Page 5 of 7 Form 8849
Name of taxpayer J J Powell, Inc. 109 W. Presqueisle St. Philipsburg, PA 16866	Tax Identification Number 25-1099474	Year/Period ended 201012;201009; 201006;201003; 200912;200909;	

**FINAL-REG, TAX-REGS, §48.4041-17. Tax-free retail sales to certain nonprofit educational organizations**

**§48.4041-17. Tax-free retail sales to certain nonprofit educational organizations**

(a) *In general.* —The taxes imposed by section 4041 do not apply in the case of a sale of any liquid by any person to a nonprofit educational organization (as defined in paragraph (b) of this section) for its exclusive use, or in the case of the use of any liquid by such an organization. In the case of a school operated as an activity of an organization described in section 501(c)(3), as referred to in paragraph (b) of this section, the liquid must be sold for the exclusive use of the school, or the liquid must be used exclusively by the school.

(b) *Definition of nonprofit educational organization.* —For purposes of section 4041(g)(4) and this section, the term “nonprofit educational organization” means an organization described in section 170(b)(1)(A)(ii), that is exempt from income tax under section 501(a), whose primary function is the presentation of formal instruction and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term also includes a school operated as an activity of an organization described in section 501(c)(3) which is exempt from income tax under section 501(a), provided such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place its educational activities are regularly carried on.

**IRC, 2011-CODE-VOL, SEC. 6675. EXCESSIVE CLAIMS WITH RESPECT TO THE USE OF CERTAIN FUELS.**

**SEC. 6675. EXCESSIVE CLAIMS WITH RESPECT TO THE USE OF CERTAIN FUELS.**

**6675(a) CIVIL PENALTY.** —In addition to any criminal penalty provided by law, if a claim is made under Link section 6416(a)(4) (relating to certain sales of gasoline), Link section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or 6427 (relating to fuels not used for taxable purposes) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

**6675(a)(1)** Two times the excessive amount; or

**6675(a)(2)** \$10.

**6675(b) EXCESSIVE AMOUNT DEFINED.** —For purposes of this section, the term “excessive amount” means in the case of any person the amount by which —

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Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit Page 6 of 7 Form 8849
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6675(b)(1) the amount claimed under section Link 6416(a)(4), Link 6420, Link 6421, or Link 6427, as the case may be, for any period, exceeds

6675(b)(2) the amount allowable under such section for such period.

6675(c) ASSESSMENT AND COLLECTION OF PENALTY. —

For assessment and collection of penalty provided by subsection (a), see Link section 6206.

#### Taxpayer position

7/27/11 - The position of the company controller (Doug Goss) & Bob Hummel (Tax Adm) at the closing meeting was that they did not agree with the citing on the exempt certificates and the need for them to pay back refunds for the latest 3 years. Since neither of these individuals can approve any binding agreements the matter will be discussed with the owner — Jeff Powell.

8/04/11 – Subsequent to discussion on the significant differences between amounts that will be owed on an agreed vs. un-agreed case, Jeff & Keith requested the following agreed action: Jim will prepare both the 5384 & 5385 forms for their review. The forms will be faxed & mailed to the taxpayer. Jeff stated that upon review, he will call Jim on Monday 8/08/11 to inform of his decision as to agree or move forward as un-agreed.

#### Conclusion

The instructions for F8849 Schedule 2 and Publication 510 provide guidance and sample model exemption certificates for filing claims for refunds. IRC 6427 provides guidance for registered ultimate vendors to file claims for fuel sold for non-taxable use. IRC section 6427(l) provides the allowance for diesel or kerosene sold to state or local governments. Under this section – 6427(l)(5) permits the payment to the ultimate vendor if 1- they are registered and 2 – meet the requirements set forth in 6416(a)(1).

IRC 6416(a)(1) states that no credit or refund of any overpayment of tax imposed shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that they:

- (A) have not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;
- (B) have repaid the amount of the tax to the ultimate purchaser of the article; and

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Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit Page 7 of 7 Form 8849
Name of taxpayer J J Powell, Inc. 109 W. Presqueisle St. Philipsburg, PA 16866	Tax Identification Number 25-1099474	Year/Period ended 201012;201009; 201006;201003; 200912;200909;

(C)(ii) has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund.

Treasury Regulation Section 48.4041-15 and 17 provide the evidence needed to meet exempt sales to state and local governments and non-profit educational organizations. A properly executed certificate is considered one that complies with the model certificates available in the Publication 510 for the period(s) in question.

In this case, the written consent that was obtained was not in accordance with the Publication 510 model certificate or regulation section. Exemption certificates cannot be valid for more than one year and it must have specific pieces of information such as whether it for diesel or gasoline. To file a claim for refund using expired exemption certificates is not permissible under the code and regulations. The certificates in question were valid for 2 years (specifying begin and end date on each certificate) and the most recent certificate available expired in the 2<sup>nd</sup> quarter of 2009. Although the certificates themselves were not valid for filing purposes, the government did not pursue adjusting periods prior to 2<sup>nd</sup> quarter of 2009. The government's position is that although the certificates on file were for more than one year – most certificates did have an end date in the 2<sup>nd</sup> filing quarter of 2009 – which means there were no valid exemptions on file for the last two quarters of 2009 and all of 2010.

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Year or Period	Date Claim Filed	Kind of Tax	Amount of Claim	Amount of Claim Disallowed	Amount of Claim Allowed
201012	Mar 31, 2011	Fuel Excise	22,017.00	22,017.00	0.00
201009	Dec 31, 2010	Fuel Excise	18,649.00	18,649.00	0.00
201006	Sep 30, 2010	Fuel Excise	20,276.00	20,276.00	0.00
201003	Jun 30, 2010	Fuel Excise	22,812.00	22,812.00	0.00

I accept the proposal of the Internal Revenue Service to disallow the claim(s) to the extent described above. This means only that I do not want the Service to consider the claim(s). It does not waive my right to file suit on the disallowance.

If you file this acceptance for a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a partnership with excise or employment tax liability, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

**Your Signature** \_\_\_\_\_ (Date) \_\_\_\_\_

**Spouse's Signature If A Joint Return Was Filed** \_\_\_\_\_ (Date) \_\_\_\_\_

**Taxpayer's Representative Sign Here** \_\_\_\_\_ (Date) \_\_\_\_\_

**Partnership/Corporate Name** \_\_\_\_\_ J J Powell, Inc.

**Partners/Corporate Officers Sign Here**

\_\_\_\_\_ (Title) \_\_\_\_\_ (Date)

\_\_\_\_\_ (Title) \_\_\_\_\_ (Date)

Catalog Number 18287T

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## ***The IRS Mission***

***Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.***

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Department of the Treasury  
Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Publication 3498 (Rev. 11-2004)  
Catalog Number 73074S

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## ***The Examination Process***

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### **Introduction**

The Internal Revenue Service (IRS) accepts most federal returns as filed. Some returns, however, are examined, or audited, to determine if income, expenses, and credits are reported accurately.

This publication discusses general rules and procedures we follow in examinations. It explains what happens before, during, and after an examination. It also explains appeal and payment procedures.

As a taxpayer, you have the right to fair, professional, prompt, and courteous service from IRS employees, as outlined in the Declaration of Taxpayer Rights found on page 3.

We must follow the tax rules set forth by Congress in the Internal Revenue Code. We also follow Treasury Regulations, court decisions, and other rules and procedures written to administer the tax laws.

If the examination results in a change to your tax liability, you may ask us to reconsider your case. Some reasons why we may reconsider your case include:

- You are submitting additional information that could result in a change to the additional amount we have determined that you owe;
- You are filing an original delinquent return after we have determined that you owe an additional amount, or;
- You are identifying a mathematical or processing error we made.

You must request reconsideration in writing and submit it to your local IRS office.

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Do you have questions or need help right away? Call us. We are here to help you.

**For General Information:**

For information about a specific examination please contact the person named on the appointment letter.

**For tax information and help:**

Call the number on the bill you received or call us toll free at:

1-800-829-1040 (for 1040 filers)  
1-800-829-4933 (for business filers)  
1-800-829-4059 /TDD

**For tax forms and publications:**

1-800-829-3676  
1-800-829-4059 /TDD  
1-703-368-9694-Forms by Fax

**Internet: [www.irs.gov](http://www.irs.gov)**

FIT - [ftp.irs.gov/pub/](http://ftp.irs.gov/pub/)  
TELENET-[irs.irs.gov](http://irs.irs.gov)

You'll find answers to frequently asked tax questions, tax forms on-line, searchable publications, hot tax issues, news, and help through e-mail.

**If you prefer to write to us . .**

Enclose a copy of your tax bill. Print your name, social security number or taxpayer identification number, and the tax form and period shown on your bill. Write to us at the address shown on your tax bill.

**You may also visit your nearest IRS Office.**

You'll find the exact address in your local phone book under *U.S. Government*

## Declaration of Taxpayer Rights

### I. Protection of Your Rights

*IRS employees will explain and protect your rights as a taxpayer throughout your contact with us.*

### II. Privacy and Confidentiality

*The IRS will not disclose to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what happens if you do not provide requested information.*

### III. Professional and Courteous Service

*If you believe that an IRS employee has not treated you in a professional, fair, and courteous manner, you should tell that employee's supervisor. If the supervisor's response is not satisfactory, you should write to the IRS Director for your Area or the Center where you file your return.*

### IV. Representation

*You may either represent yourself or, with proper written authorization, have someone else represent you. Your representative must be a person allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent (a person enrolled to practice before the IRS). If you are in an interview and ask to consult such a person, then we must stop and reschedule the interview in most cases.*

*You can have someone accompany you at an interview. You may make sound recordings of any meetings with our examiners, appeal, or collection personnel, provided you tell us in writing 10 days before the meeting.*

### V. Payment of Only the Correct Amount of Tax

*You are responsible for paying only the correct amount of tax due under the law—no more, no less. If you cannot pay all of your tax when it is due, you may be able to make monthly payments.*

### VI. Help with Unresolved Tax Problems

*The Taxpayer Advocate Service can help you if you have tried unsuccessfully to resolve a problem with the IRS. Your local Taxpayer Advocate can offer you special help if you have a significant hardship as a result of a tax problem. For more information, call toll-free, 1-877-777-4778 (1-800-829-4059 for TTY/TTY) or write to the Taxpayer Advocate at the IRS office that last contacted you.*

### VII. Appeals and Judicial Review

*If you disagree with us about the amount of your tax liability or certain collection actions, you have the right to ask the Appeals Office to review your case. You may also ask a court to review your case.*

### VIII. Relief from Certain Penalties and Interest

*The IRS will waive penalties when allowed by law if you can show you acted reasonably and in good faith or relied on the incorrect advice of an IRS employee. We will waive interest that is the result of certain errors or delays caused by an IRS employee.*

## Your Return Is Going To Be Examined.

### Before the Examination

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change or you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. One way is to use computer programs to identify returns that may have incorrect amounts. The programs may be based on information returns, such as Forms 1099 or W-2, on studies of past examinations, or on certain issues identified by other special projects. Another way is to use information from compliance projects that indicates a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

### During the Examination

#### Examinations by Mail

Some examinations are conducted entirely by mail. If the examination is conducted by mail, you'll receive a letter from us asking for additional information about certain items shown on your return, such as income, expenses, and itemized deductions.

If the examination is conducted by mail, you can:

1. Act on your own behalf. (In the case of a jointly filed return, either spouse can respond or both spouses can send a joint response.)
2. Have someone represent you in correspondence with us. This person must be an attorney, accountant, enrolled agent, an enrolled actuary, or the person who prepared the return and signed it as the preparer. If you choose to have someone represent you, you must furnish us with written authorization. Make this authorization on Form 2848, *Power of Attorney and Declaration of Representative*.

*Note: You may obtain any of the forms and publications referenced in this publication by calling 1-800-829-3678.*

#### Examinations in Person

An examination conducted in person begins when we notify you that your return has been selected. We will tell you what information you need to provide at that time. If you gather the information before the examination, we may be able to complete it more easily and in a shorter time.

If the examination is conducted in person, it can take place in your home, your place of business, an IRS office, or the office of your attorney, accountant, or enrolled agent (a person enrolled to practice before the IRS). If the time or place is not convenient for you, the examiner will try to work out something more suitable.



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**Your Return Is Going To Be Examined. (cont.)**

If the examination is conducted in person, you can:

1. Act on your own behalf. (In the case of a jointly filed return, either spouse or both can attend the interview.) If you are acting on your own behalf, you may leave to consult with your representative. We will suspend the interview and reschedule the examination. We cannot suspend the interview if we are conducting it as a result of your receiving an administrative summons.
2. Have someone accompany you, either to support your position or to witness to the proceedings.
3. Accompany someone who will represent you. This person must be an attorney, accountant, enrolled agent, an enrolled actuary, or the person who prepared the return and signed it as the preparer.
4. Have your representative act for you and not be present at the audit yourself. If you choose to have someone represent you in your absence, you must furnish us with written authorization. Make this authorization on Form 2848, *Power of Attorney and Declaration of Representative*.

**How to Stop Interest from Accumulating**

During your examination, if you think you will owe additional tax at the end of the examination, you can stop interest from accumulating by paying all or part of the amount you think you will owe. Interest will stop accumulating on the part you pay when the IRS receives your money. Interest will only be charged on the tax, penalties, and interest that are unpaid on the date they are assessed.

**Consents to Extend the Statute of Limitations**

We try to examine tax returns as soon as possible after they are filed, but occasionally we may request that you extend the statute of limitations of your tax return.

A return's statute of limitation generally limits the time we have to examine it and assess tax. Assessments of tax must be made within 3 years after a return is due or filed, whichever is later. We can't assess additional tax or make a refund or credit (unless you filed a timely claim) after the statute of limitations has expired. Also, if you disagree with the results of the examination, you can't appeal the items you disagree with unless sufficient time remains on the statute. Because of these restrictions, if there isn't much time remaining to examine your return, assess additional taxes, and/or exercise your appeal rights, you have the opportunity to extend the statute of limitations. This will allow you additional time to provide further documentation to support your position, request an appeal if you do not agree with our findings, or to claim a tax refund or credit. It also allows the Service time to complete the examination, make any additional assessment, if necessary, and provide sufficient time for processing.

A written agreement between you and the Service to extend the statutory period of a tax return is called a "consent." Consents can be used for all types of tax except estate tax.

There are two basic kinds of consent forms. One sets a specific expiration date for the extension, and the other for an indefinite period of time. Either type of consent may be limited by restrictive conditions. The use of a restricted consent is to allow the statute to expire with regard to all items on the return except those covered by the restrictive language.

If the statute of limitations for your tax return is approaching, you may be asked to sign a consent. You may:

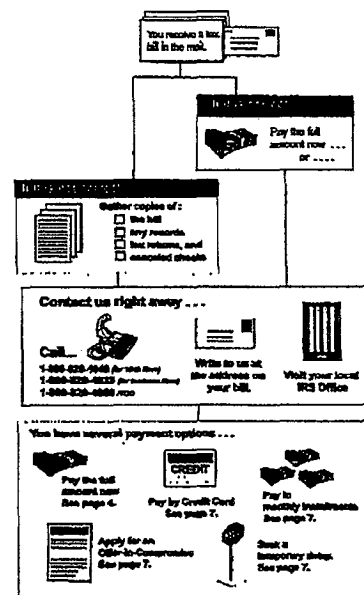
1. Refuse to extend the statute of limitations;
2. Limit or restrict the consent to particular issues, or
3. Limit the extension to a particular period of time.

The consent will be sent or presented to you with a letter explaining this process and Publication 1036, *Extending the Tax Assessment Period*. For further information, refer to this publication.

**Results of the Examination**

If we accept your return as filed, you will receive a letter stating that the examiner proposed no changes to your return. You should keep this letter with your tax records.

If we don't accept your return as filed, we will explain any proposed changes to you and your authorized representative. It is important that you understand the reasons for any proposed changes; don't hesitate to ask about anything that is unclear to you.

**What to Do When You Receive a Bill from the IRS**

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## What To Do If You Agree or Disagree with the Examination Results

### If You Agree

If you agree with a proposed increase to tax, you can sign an agreement form and pay any additional tax you may owe. You must pay interest and applicable penalties on any additional balance due. If you pay when you sign the agreement, interest is generally figured from the due date of your return to the date of your payment.

If you do not pay the additional tax and interest, you will receive a bill (See "What To Do When You Receive a Bill from the IRS" on page 4.) If the amount due (including interest and applicable penalties) is less than \$100,000 and you pay it within 21 business days, we will not charge more interest or penalties. If the amount is \$100,000 or more, the period is reduced to 10 calendar days. If you can't pay the tax due at the end of the examination, you may pay whatever amount you can and request an installment agreement for the balance. (See "Setting up an Installment Agreement" on page 7.)

If you are entitled to a refund, you will receive it sooner if you sign the agreement form at the end of the examination. You will also be paid interest on the refund.

### If You Do Not Agree

If you do not agree with the proposed changes, the examiner will explain your appeal rights. If your examination takes place in an IRS office, you may request an immediate meeting with the examiner's supervisor to explain your situation. You may also enter into an *Agreement to Mediate* to help resolve disputes through Fast Track Mediation services. (See next column.) Mediation can take place at this meeting or afterwards. If an agreement is reached, your case will be closed.

If you cannot reach an agreement with the supervisor at this meeting, or if the examination took place outside an IRS office or was conducted through correspondence with an IRS Campus employee, the examiner will prepare a report explaining your position and ours. The examiner will forward your case to the Area office for processing.

You will receive:

- A letter (known as a 30-day letter) notifying you of your rights to appeal the proposed changes within 30 days,
- A copy of the examiner's report explaining the proposed changes, and
- An agreement or a waiver form.

You generally have 30 days from the date of the 30-day letter to tell us whether you will accept the proposed changes or appeal them. The letter will explain what steps you should take, depending on what action you choose. Be sure to follow the instructions carefully. Appeal rights are explained following this section.



### Caution

If you do not respond to the 30-day letter, or if you respond but do not reach an agreement with an appeals officer, we will send you a 90-day letter, also known as a *Notice of Deficiency*. This is a legal document that explains the proposed changes and the amount of the proposed tax increase. You will have 90 days (150 days if it is addressed to you outside the United States) from the date of this notice to file a petition with the Tax Court. If you do not petition the Tax Court you will receive a bill for the amount due.

### Fast Track Mediation Services

If you do not agree with any or all of the IRS findings, you may request Fast Track Mediation services to help you resolve disputes resulting from the examination (audits). Fast Track Mediation offers an expedited process with a trained mediator, who will help facilitate communication, in a neutral setting. The mediator will work with you and the IRS to understand the nature of the dispute. The purpose is to help the two of you reach a mutually satisfactory resolution that is consistent with the applicable law. The mediator has no authority to require either party to accept any resolution. You may withdraw from the mediation process anytime. If any issues remain unresolved you will retain all of your usual appeal rights.

Most cases qualify for Fast Track Mediation. To begin the process, you may request the examiner or IRS representative to arrange a mediation meeting. Both you and the IRS representative must sign a simple *Agreement to Mediate* form. A mediator will then be assigned. Generally, within a week, the mediator will contact you and the IRS representative to schedule a meeting. After a brief explanation of the process, the mediator will discuss with you when and where to hold the mediation session.

For additional information, refer to Publication 3605, *Fast Track Mediation-A Process for Prompt Resolution of Tax Issues*.

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## How Do You Appeal a Decision?

### The Appeal System

Because people sometimes disagree on tax matters, the Service has an appeal system. Most differences can be settled within this system without going to court.

Your reasons for disagreeing must come within the scope of tax laws, however. For example, you cannot appeal your case based only on moral, religious, political, constitutional, conscientious, or similar grounds.

If you do not want to appeal your case within the IRS, you may take your case directly to tax court.

### Appeal Within the IRS

You may appeal our tax decision to a local appeals office, which is separate and independent of the IRS Office taking the action you disagree with. An appeals office is the only level of appeal within the IRS. Conferences with Appeals Office personnel may be conducted in person, through correspondence, or by telephone with you or your authorized representative.

If you want to have a conference with an appeals officer, follow the instructions in the letter you received. We will send your conference request letter to the appeals office to arrange for a conference at a convenient time and place. You or your qualified representative should be prepared to discuss all disputed issues at the conference. Most differences are settled at this level. Only attorneys, certified public accountants or enrolled agents are allowed to represent a taxpayer before Appeals. An unenrolled preparer may be a witness at the conference, but not a representative.

If you want to have a conference with an appeals officer, you may also need to file either a small case request or a formal written protest with the contact person named in the letter you receive.

Whether you file a small case request or a formal written protest depends on several factors.

### Making a Small Case Request

You may make a small case request if the total amount of tax, penalties, and interest for each tax period involved is \$25,000 or less, and you do not meet one of the exceptions below for which a formal protest is required. If more than one tax period is involved and any tax period exceeds the \$25,000 threshold, you must file a formal written protest for all periods involved. The total amount includes the proposed increase or decrease in tax and penalties or claimed refund. For an Offer-in-Compromise, include total unpaid tax, penalty, and interest due.

To make a small case request, follow the instructions in our letter to you by sending a brief written statement requesting an appeals conference. Indicate the changes you do not agree with and the reasons you do not agree with them.



Be sure to send the protest within the time limit specified in the letter you received.

You must file a formal written protest.

- If the total amount of tax, penalties, and interest for any tax period is more than \$25,000;
- In all partnership and S corporation cases, regardless of the dollar amount;
- In all employee plan and exempt organization cases, regardless of the dollar amount;
- In all other cases, unless you qualify for other special appeal procedures, such as requesting appeals consideration of liens, levies, seizures, or installment agreements. (See Publication 1880, *Collection Appeal Rights*, for more information on special collection appeals procedures.)

### Filing a Formal Protest

When a formal protest is required, send it within the time limit specified in the letter you received. Include in your protest:

- Your name and address, and a daytime telephone number.
- A statement that you want to appeal the IRS findings to the Appeals Office.
- A copy of the letter showing the proposed changes and findings you do not agree with (or the date and symbols from the letter.)
- The tax periods or years involved.
- A list of the charges that you do not agree with, and why you do not agree.
- The facts supporting your position on any issue that you do not agree with.
- The law or authority, if any, on which you are relying.
- You must sign the written protest, stating that it is true, under the penalties of perjury as follows:

*"Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."*

If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

- That he or she submitted the protest and accompanying documents and;
- Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

We urge you to provide as much information as you can, as this will help us speed up your appeal. This will save you both time and money.

Additional information about the Appeals process may be found in Publication 8, *Your Appeals Rights and How to Prepare a Protest if you Don't Agree*.

## After the Examination

### Payment Options

#### You cannot pay all that you owe now

If you cannot pay all your taxes now, pay as much as you can. By paying now, you reduce the amount of interest and penalty you owe. Then immediately call, write, or visit the nearest IRS office to explain your situation. After you explain your situation, we may ask you to fill out a Collection Information Statement. If you are contacting us by mail or by telephone, we will mail the statement to you to complete and return to us. This will help us compare your monthly income with your expenses so we can figure the amount you can pay. We can then help you work out a payment plan that fits your situation. This is known as an installment agreement.

#### Payment by credit card

Individual taxpayers may make credit (and debit) card payments on tax liabilities (including installment agreement payments) by phone or Internet. Payments may be made to the United States Treasury through authorized credit card service providers.

The service providers charge a convenience fee based on the payment amount. You will be informed of the convenience fee amount before the credit card payment is authorized. This fee is in addition to any charges, such as interest, that may be assessed by the credit card issuer. Visit [www.irs.gov](http://www.irs.gov) to obtain a list of authorized service providers and to obtain updated information on credit card payment options.

*Note: You can use debit cards issued by VISA and MasterCard when making tax payments through the participating service providers. However, the service providers and card issuers treat debit cards and credit cards equally for the purpose of processing electronic tax payments. Therefore, debit card users are charged the same fee traditionally associated with credit card transactions.*

#### Payment by Electronic Federal Tax Payment System (EFTPS)

EFTPS is an Electronic Federal Tax Payment System developed by the Internal Revenue Service and Financial Management Service (FMS).

The system allows federal taxes to be paid electronically. The system allows the use of the Internet at [www.eftps.gov](http://www.eftps.gov) or telephone to initiate tax payments directly. EFTPS payments may also be made through your local financial institution. The service is convenient, secure and saves time.

You may enroll in EFTPS through the website at [www.eftps.gov](http://www.eftps.gov) or by completing a form available from EFTPS customer service at (800) 555-4477 or (800) 945-8400.

#### Setting up an installment agreement

Installment agreements allow you to pay your full debt in smaller, more manageable amounts. Installment agreements generally require equal monthly payments. The amount and number of your installment payments will be based on the amount you owe and your ability to pay that amount within the time we can legally collect payment from you.

You should be aware, however, that an installment agreement is more costly than paying all the taxes you owe now. Like revolving credit arrangements, we charge interest on the unpaid portion of the debt. Penalties also continue to accumulate on installment agreements.

If you want to pay off your tax debt through an installment agreement, call the number shown on your bill. If you owe:

- \$25,000 or less in tax, we will tell you what you need to do to set up the agreement;
- More than \$25,000, we may still be able to set up an installment agreement for you, but we may also ask for financial information to help us determine your ability to pay.

Even if you set up an installment agreement, we may still file a Notice of Federal Tax Lien to secure the government's interest until you make your final payment.

*Note: We cannot take any collection actions affecting your property while we consider your request for an installment agreement, while your agreement is in effect, for 30 days after we reject your request for an agreement, or for any period while you appeal the rejection.*

If you arrange for an installment agreement, you may pay with:

- Personal or business checks, money orders, or certified funds (all made payable to the U.S. Treasury).
- Credit and debit cards.
- Payroll deductions your employer takes from your salary and regularly sends to IRS, or
- Electronic transfers from your bank account or other similar means.

#### Apply for an Offer-in-Compromise

In some cases, we may accept an Offer-in-Compromise to settle an unpaid tax account, including any penalties and interest. With this kind of arrangement, we can accept less than the full amount you owe when it is doubtful we will be able to collect the entire amount due.

Offers in compromise are also possible if collection action would create an economic hardship. You may want to discuss these options with your examiner.

#### Temporarily Delay the Collection Process

If we determine that you can't pay any of your tax debt, we may temporarily delay collection until your financial condition improves. You should know that if we delay collecting from you, your debt will increase because penalties and interest are charged until you pay the full amount. During a temporary delay, we will again review your ability to pay. We may also file a Notice of Federal Tax Lien, to protect the government's interest in your assets. See Publication 594, *The IRS Collection Process*.

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**After the Examination (cont.)****Innocent Spouse Relief**

If you filed a joint tax return, you are jointly and individually responsible for the tax and any interest or penalty due on the joint return, even if you later divorce. In some cases, a spouse may be relieved of the tax, interest, and penalties on a joint return.

You can ask for relief no matter how small the liability.

Three types of relief are available.

- Innocent spouse relief - may apply to all joint filers;
- Separation of liability - may apply to joint filers who are divorced, widowed, legally separated, or have not lived together for the past 12 months;
- Equitable relief - applies to all joint filers.

Innocent spouse relief and separation of liability apply only to items incorrectly reported on the return. If a spouse does not qualify for innocent spouse relief or separation of liability, the IRS may grant equitable relief.

Each type of relief is different and each has different requirements. You must file Form 9857, *Request for Innocent Spouse Relief*, to request any of these methods of relief. Publication 971, *Innocent Spouse Relief*, explains each type of relief, who may qualify, and how to request relief.

**You Must Contact Us**

It is important that you contact us regarding any correspondence you receive from us. If you do not pay your bill or work out a payment plan, we are required by law to take further collection actions.

**What If You Believe Your Bill is Wrong****Caution**

If you believe your bill is wrong, let us know as soon as possible. Call the number on your bill, write to the IRS office that sent you the bill, call 1-800-829-1040 (for 1040 filers), 1-800-829-4933 (for business filers), 1-800-829-4059 (TDD), or visit your local IRS office.

To help us correct the problem, gather a copy of the bill along with copies of any records, tax returns, and canceled checks, etc., that will help us understand why you believe your bill is wrong.

If you write to us, tell us why you believe your bill is wrong. With your letter, include copies of all the documents you gathered to explain your case. Please do not send original documents. If we find you are correct, we will adjust your account and, if necessary, send you a corrected bill.

**Privacy Act Statement**

*The Privacy Act of 1974 says that when we ask you for information, we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if you do not provide it and whether or not you must respond under the law.*

*This notice applies to tax returns and any papers filed with them. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.*

*Our legal right to ask for information is found in Internal Revenue Code sections 6001, 6011, and 6012(a), and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections.*

*Code section 6109 and its regulations say that you must show your social security number or individual taxpayer identification number on what you file. You must also fill in all parts of the tax form that apply to you. This is so we know who you are, and can process your return and papers. You do not have to check the boxes for the Presidential Election Campaign Fund.*

*We ask for tax return information to carry out the U.S. tax laws. We need it to figure and collect the right amount of tax.*

*We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to cities, states, the District of Columbia, and U.S. Commonwealths or possessions to carry out their tax laws. And we may give it to certain foreign governments under tax treaties they have with the United States.*

*We may also disclose this information to Federal, state, or local agencies that investigate or respond to acts or threats of terrorism or participate in intelligence or counterintelligence activities concerning terrorism.*

*If you do not file a return, do not give us the information we ask for, or provide fraudulent information, the law says that we may have to charge you penalties and, in certain cases, subject you to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make your tax higher or delay any refund. Interest may also be charged.*

*Please keep this notice with your records. You may want to refer to it if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.*